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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,187	10/25/2005	Eduardo Anita Aldecoa	ANITUA4	6873
1444	7590	12/14/2009	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C.			EIDE, HEIDI MARIE	
624 NINTH STREET, NW				
SUITE 300			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20001-5303			3732	
			MAIL DATE	DELIVERY MODE
			12/14/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/526,187	ANITUA ALDECOA, EDUARDO	
	<b>Examiner</b>	<b>Art Unit</b>	
	HEIDI M. EIDE	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 September 2009.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4,5,18-20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4,5,18-20 and 22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 September 2009 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Drawings***

The drawings were received on September 17, 2009. These drawings are not acceptable. The drawings contain new matter which was not submitted with the originally filed disclosure. No new matter should be entered.

### ***Specification***

The amendments to the specification submitted on September 17, 2009 have not been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Weissman 4,990,088.

Weissman discloses a starter drill capable of piercing the hardest outer layer of a bone during oral surgery before using one or more osteotomes for preparing a cavity for a dental implant, the starter drill having a quadrangular section 13 drilling end (col. 3, II. 54-57) that is small in section and an end 22 fir engagement to a surgical motor (col. 3, II.49-54). Weissman does not specifically teach the drill functioning as claimed,

however, the drill is capable of functioning as claimed, therefore the claimed limitations are met.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1, 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi (2002/0094508) in view of Weissman 4,990,088 in view of Lazzara et al. (6,290,499) in view of Misch et al 6,068,480 (Misch) further in view of Hollander et al. 6,319,005 (Hollander). Lorenzi discloses a kit of motor-driven instruments comprising osteotomes of progressive diameters (par. 29), the osteotomes having an apical end, threaded conical section and a threaded upper section, and an polygonal adjustment area (figure 1) in which connectors are engaged (par. 22), two drills of different diameters comprising ends for connection to a surgical motor (figure 2, par. 29), and connector for coupling to a dental drill or surgical hand wrench (par 22, 33) and the kit comprises a starter drill having an end section that is smaller in section than the osteotomes and an end for engagement to a surgical motor (par. 31). The starter drill is capable of piercing the hardest outer layer of a bone during oral surgery before using one ore more osteotomes. Lorenzi teaches the invention as substantially claimed and discussed above, however, not specifically teach the starter drill having a quadrangular

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section end, the polygonal adjustment area capped by a cylindrical projecting section that includes a circular recess in which an O-ring seal is housed, the connectors each have an end having a blind axial recess and the second connector having a different cross-sectional shape than the first connector and the osteotome comprises a threaded cylindrical section.

2. Weissman teaches a dental drill comprising a quadrangular-section drilling end 13 (col. 3, ll. 54-57). It would have been obvious to one of ordinary skill in the art to modify the starter drill of Lorenzi with the quadrangular drilling end as taught by Weissman as a matter of obvious design choice since it has held that the configuration of the claimed end section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed end section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B). Lorenzi/Weissman teaches the invention as substantially claimed and discussed above, however, does not teach the polygonal adjustment area capped by a cylindrical projecting section that includes a circular recess in which an O-ring seal is housed, the connectors each have an end having a blind axial recess and the second connector having a different cross-sectional shape than the first connector and the osteotome comprises a threaded cylindrical section.

3. Lazzara teaches a instrument for fixing dental implants comprising dental component having an end capped by a cylindrical projecting section creating a circular recess 132 in which an O-ring seal 168 is housed. It would have been obvious to one having ordinary skill in the art to further modify the adjustment area of

Lorenzi/Weissman to have the shape taught by Lazzara in order to secure components of the instruments and as an obvious matter of choice since it has held that the configuration of the claimed adjustment section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed adjustment section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B).

Lorenzi/Weissman/Lazzara teaches the invention as substantially claimed and discussed above, however, does not specifically teach the connectors each have an end having a blind axial recess and the second connector having a different cross-sectional shape than the first connector and the osteotome comprises a threaded cylindrical section.

4. Misch teaches connectors having different cross-sectional shapes as illustrated in fig. 4A the connector for a motor driven instrument and in fig. 5, a manual driven instrument. Misch teaches instrument for fixing dental implants comprising connector having an end comprising a blind axial recess with a polygonal section incorporating the o-ring seal (figure 5). It would have been obvious to one having ordinary skill in the art to modify Lorenzi/Weissman/Lazzara with the connector taught by Misch in the set of instruments in order to connect the working part of the instrument to a driving part. Lorenzi/Weissman/Lazzara/Misch teaches the invention as substantially claimed and discussed above, however, does not specifically teach the osteotome comprises a threaded cylindrical section.

5. Hollander teaches a conical section followed by a cylindrical section (see abstract, col. 1, ll. 55-60). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lorenzi/Weissman/Lazzara/Misch with the conical and cylindrical section taught by Hollander as a matter of obvious design choice since it has held that the configuration of the claimed section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B) and in order to create a geometry in the jaw the is complemental to the implant (col. 2, ll. 18-22).

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi 2002/0094508 in view of Hollander et al. 6,319,005 (Hollander).

7. Lorenzi teaches a rotary osteotome for widening of a dental implant site comprising an elongated body having an apical end followed by a threaded conical section and a threaded upper section, with the threaded upper section capped by an adjustment area in which a drive connector is configured to be engaged (par. 22, fig. 1). Lorenzi teaches the invention as discussed above, however does not show the osteotome comprises a threaded cylindrical section.

8. Hollander teaches a conical section followed by a cylindrical section (see abstract, col. 1, ll. 55-60). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lorenzi in view of Hollander as a matter of

obvious design choice since it has held that the configuration of the claimed section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B) and in order to create a geometry in the jaw the is complemental to the implant (col. 2, ll. 18-22).

Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi (2002/0094508) in view of Hollander as applied to claim 18 above, and further in view of Lazzara et al. (6,290,499).

Lorenzi/Hollander teaches the invention as substantially claimed and discussed above, however, does not teach the adjustment area having a polygonal section capped by a cylindrical projection section that includes a circular recess and an O-ring seal housed in the recess and a drive connector having a recess of the polygonal cross section complementary to the polygonal section projection of the adjustment area and the O-ring engageable with an insides surface of the recess of the drive connector.

Lazzara teaches instrument for fixing dental implants comprising dental component having an end capped by a cylindrical projecting section creating a circular recess 132 in which an O-ring seal 168 is housed. The drive connecter is capable of being releasably engaged with the adjustment area and configured to be driven to rotate the osteotome. It would have been obvious to one having ordinary skill in the art to modify Lorenzi/Hollander with the connector of Lazzara in order to secure components of the instruments.

***Response to Arguments***

Applicant's arguments with respect to claims 1 and 22 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed September 17, 2009 have been fully considered but they are not persuasive. Applicant argues that the pilot drill of Lorenzi is not a starter drill that is for piercing the hardest outer layer of a bone during oral surgery before using one or more osteotomes, however, it is well known in the art that a pilot drill is for drilling a pilot hole in the bone, before drilling the implant bore. Further applicant is arguing functional limitations and intended use. In response to applicant's argument that the pilot drill is not able to pierce the hardest outer layer of a bone, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant further argues that Lazzara does not teach an osteotome, however, Lazzara is not used to teach the limitation of the osteotome, but the limitation of an adjustment area, therefore applicant's argument is moot.

Applicant further argues that Hollander refers to a drill and not an osteotome, however, Hollander is used to teach the limitation of the cylindrical section and conical section. Applicant states that the particular claimed configuration does have significance which was pointed out in the response filed 2/28/09. It is noted that the Hollander teaches the shape serves the same significance (col. 2, ll. 18-22). Therefore,

as stated in the above rejection, it would have been obvious to modify the prior art with the shape taught by Hollander in order to provide a bore that is compatible with implant that is to be inserted in to the bore.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. EIDE whose telephone number is 571-270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Heidi Eide  
Examiner  
Art Unit 3732**

/Heidi M Eide/  
Examiner, Art Unit 3732

12/8/2009

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732